IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 56 OF 1990

The Commissioner of Income-tax,
Bombay City-II, Bombay. ...Applicant
V/s.
Alfa Laval (I) Ltd. ...Respondent

Mr.Ashok Katangale, Sr.Counsel i/b. K.C. Sidhwa for Applicant.
None for Respondent.

CORAM : V.C. DAGA AND
A.S. AGUIAR, JJ.

DATED : JULY 15, 2005.

ORAL JUDGMENT (PER V.C. DAGA, J.) :-

. By this reference under Section 256(1) of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following questions of law for the opinion of this Court :-

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the disallowance u/r. 6D of the Income-tax Rules, 1962, should be computed on the basis of total expenditure on each employee for the whole year and not on the basis of expenditure incurred on each trip ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the expenditure of Rs.44,966/- incurred by the assessee on the foreign trips of the wife of the company President was wholly & exclusively incurred for the business of the assessee and was allowable as a deduction in computing the profits & gains of the business ?"

2. So far as first question is concerned, the same is covered by the decision of this Court in the case of **Commissioner of Income Tax V/s. Aorow India Ltd. (1998) 229 ITR Page 325**. It is, therefore, answered in favour of the revenue and against the assessee.

3. So far as second question is concerned, it relates to the expenditure of Rs.44,966/- incurred by the assessee company on a foreign trip of the wife, who had accompanied her husband, the President of the assessee-company, who was invited to attend an advanced

management programme at Harward University alongwith his wife. The CIT(A) has recorded a categorical finding of fact that the said expenses were incurred for the purposes of the business of the assessee. The said finding of fact has been affirmed by the Tribunal. Accordingly, Tribunal was pleased to allow deduction on this count.

4. Now the question is whether the Tribunal was right in its view. It is not in dispute that the expenses as a fact were incurred. The amount of expenses incurred is not in doubt. The expenses must stand to the test of commercial expediency. The test of commercial expediency cannot be reduced in the shape of a ritualistic formula, nor can it be put in a water-tight compartment so as to be confined in a strait-jacket formula. All that law requires is that the expenditure should not be in the nature of capital expenditure or personal expenditure of the assessee and it should be wholly and exclusively laid out for the purposes of the business. It is well settled that items of expenditure are to be considered from the point of

view of a normal, prudent businessman. The test merely means that the Court will place itself in the position of a businessman and find out whether the expenses incurred could be said to have been laid out for the purpose of the business. It seems that in the ultimate analysis the matter would depend on the status of the parties as spelt out and the nature or character of the trade or venture, the purpose for which the expenses were incurred and the object which was sought to be achieved in incurring those expenses.

5. Applying normal, prudent businessman's approach, we do not think that the expenses incurred by the assessee on a foreign trip of the wife of the company's President could be said to be not for the purposes of the business of the assessee company. Considering the concurrent finding of fact recorded by both the authorities below, in our view, the expenditure would be allowable as deduction while computing the profit and gains of the business.

6. Before concluding, we wish to clarify that the

case needs to be decided on its own facts primarily considering the business expediency. That, per se, the expenses incurred by the assessee on the foreign trip of the wife may not always be allowable as deduction in computing the profits and gains of the business unless it is connected with the business of the assessee.

7. We, are, therefore, confirming our Judgment to the facts of this case which we have decided in the light of the concurrent findings of fact recorded by both the authorities below.

: ORDER :

. In the above view of the finding, the question is answered in affirmative i.e. in favour of the assessee and against the revenue. Reference, accordingly, stands disposed of with no order as to costs.

(A.S. AGUIAR, J.) **(V.C. DAGA, J.)**